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# International Convention for the Protection of All Persons from Enforced Disappearance

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**Committee on Enforced Disappearances**

## Concluding observations on the report submitted by Paraguay under article 29, paragraph 1, of the Convention

**Addendum**

## Information received from Paraguay on follow-up to the concluding observations*

[Date received: 20 October 2015]

* The present document is being issued without formal editing.



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## Response to the concluding observations on the report submitted by Paraguay under article 29, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance

**Paragraph 12. The Committee recommends that the State party take the necessary steps to appoint a new, suitably qualified ombudsman as soon as possible. It further recommends that the State party take steps to ensure that the Ombudsman's Office is supplied with the necessary financial, material and staffing resources to carry out its mandate effectively and independently, in accordance with the Paris Principles.**

1. Pursuant to Act No. 631/95 on the Ombudsman's Office, the Ombudsman is appointed by a two-thirds majority of the Chamber of Deputies, from a shortlist of three candidates proposed by the Senate.

2. The National Congress launched the selection process for the posts of Ombudsman and Deputy Ombudsman in 2015. The process comprised a national call for candidates and, following the submission of candidatures for both posts, the Senate held public hearings of all candidates.

3. The shortlists for both posts are currently being drawn up. It should be noted that the Senate accepted a total of 65 of the 79 candidatures submitted.

4. It should further be noted that the National Congress is currently considering the draft general national budget for 2016, which provides for an allocation of 10,789,436,130 guaraníes to the Ombudsman's Office.

**Paragraph 20. The Committee recommends that the State party take the necessary measures, including the adoption of compulsory enforcement protocols and the allocation of appropriate resources, to ensure that, in practice, all persons deprived of their liberty may communicate without delay with their families, a lawyer or any person of their choosing and, in the case of foreigners, with their consular authorities.**

5. First it should be pointed out that the Ministry of the Interior has implemented the National Public Safety Strategy as the primary means of developing a public policy on safety with a comprehensive human rights approach, through the multidisciplinary participation of different State actors and civil society organizations.

6. The National Public Safety Strategy encompasses a programme to bring police procedures into line with international human rights standards governing the police. Accordingly, and in order to comply with the recommendations contained in paragraph 20 above, a draft resolution establishing minimum standards for police custody and an institutional communication mechanism to safeguard the right to defence and ensure compliance with procedural time limits has been prepared by the Office of the National Chief of Police and is pending approval.

7. This document will establish the conditions of detention in police custody, under which detainees should have unrestricted access to the rights and guarantees to be treated with respect by police officers or third parties, to communicate their detention immediately to their relatives or persons they indicate to the personnel who question them, to communicate freely with their relatives and lawyers and to have access to health-care services.

8. An institutional communication mechanism will also be set up to ensure compliance with procedural time limits, whereby the Public Prosecution Service, the

court responsible for procedural safeguards, the Juvenile Criminal Court or the Office of the Public Defender, as appropriate, will be notified as soon as anyone is deprived of their liberty.

9. Furthermore, on 26 November 2014, the Office of the National Chief of Police issued Circular No. 65 reminding all members of the National Police of the applicability of the American Convention on Human Rights (Pact of San José), the International Covenant on Civil and Political Rights and the Vienna Convention on Consular Relations and referring to the obligation to observe the guarantees set forth in those instruments.

10. It should be noted that article 3 of Act No. 222/93, the National Police Organization Act, provides that "the National Police will discharge its duties in keeping with constitutional and legal norms and will base its action on respect for human rights", which is also mentioned in the Circular.

11. It should be emphasized the National Police may not, under any circumstances, order detention but only carry out arrests and execute arrest warrants issued by the Public Prosecution Service or a competent court. It may also order the release of an arrested or detained person when it considers that pretrial detention will not be requested.

12. When foreigners are detained, pursuant to the Vienna Convention on Consular Relations of 1963, the consulate of the detainee's country of origin is immediately informed by the Directorate of International Affairs of the Public Prosecution Service through the Ministry of Foreign Affairs. However, in cases of emergency, the Public Prosecution Service may contact the relevant consulate directly.

13. In January 2012, the Attorney-General's Office issued Circular No. 2 on this very matter. The Circular is binding on all national prosecutors and recalls the obligation to inform immediately the relevant consulate when any foreigner is detained, charged or sentenced, in accordance with article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations of 1963.

**Paragraph 26. The Committee recommends that the State party adopt the necessary legislative or other measures to guarantee the right to reparation and to prompt, fair and adequate compensation of all persons who have suffered direct harm as a result of an enforced disappearance, regardless of when it was perpetrated.**

**(a) Adopt the necessary legislative measures to establish a comprehensive, gender-sensitive system of reparation that is fully in line with article 24, paragraphs 4 and 5, of the Convention; and**

**(b) Intensify its efforts and adopt the necessary measures to ensure that all persons who have suffered direct harm as a result of an enforced disappearance committed between 1954 and 1989 may exercise their right to receive full reparation, including medical and psychological rehabilitation, in accordance with the terms of article 24, paragraphs 4 and 5, of the Convention and are not subject to requirements that could hinder the full exercise of that right.**

14. The Government refers the Committee to the information provided in its replies to the list of issues concerning the procedure for compensating victims of the human rights violations committed from 1954 to 1989.

15. It should be made clear that the compensation payments provided for under Act No. 838/96 and its amendments constitute special compensation payments, which are handled by the administrative bodies; there are thus no procedural obstacles, which facilitates their award. Furthermore, persons who are not expressly covered by the

aforementioned Act, or consider that the compensation it offers — that is determined in advance — is not sufficient, have the option of filing a civil claim, through ordinary proceedings against the parties considered responsible, with subsidiary State responsibility, in accordance with article 106 of the National Constitution.

16. It should also be pointed out that the purpose of Act No. 4381/11 amending articles 1 and 3 of Act No. 838/96 (on compensation of victims of human rights violations during the dictatorship) is to overcome the bureaucracy of processing applications before the related report and compensation decision are issued, by setting a deadline for the relevant authority to issue its decision and give notification thereof. Moreover, as a result of the amendment to article 1 of Act No. 838/96, the right to claim compensation is imprescriptible.

17. In this connection, the Attorney General's Office is in the process of modifying the criteria for awarding compensation, with a focus on substantiated judgement, rather than on considerations of cost. The recommendations for the Ombudsman's Office regarding the final compensation decision should thus be improved and streamlined.

18. On another matter, the National Team to Investigate, Search for and Identify Persons Detained and Disappeared or Extrajudicially Executed (ENABI) during the dictatorship in Paraguay from 1954 to 1989, which is currently coordinated by the Ministry of Justice, continues its work to search for and identify disappeared persons. Since 2006, investigations, excavations and exhumations of remains have been conducted, initially at the request of the Truth and Justice Commission, subsequently by the Ombudsman's Office and now by ENABI.

19. After nine years of work, a total of 34 skeletal remains have been exhumed, presumably of persons who disappeared during the dictatorship, discovered at various public and private agencies throughout the country. The remains are currently under the protection of the Public Prosecution Service and awaiting identification.

20. With regard to the identification of the 34 remains exhumed, under the coordination of ENABI, an agreement had been signed with the Institute for Comparative Studies in Criminal and Social Sciences (INECIP), under which the process of identifying the remains of victims of enforced disappearance in Paraguay will be conducted by the Argentine Forensic Anthropology Team (EAFF).

21. Workshops in Asunción and by videoconference have been held with teams of experts from ENABI, EAAF and INECIP in order to draw up a biannual workplan. Agreement has been reached on the following activities for the period 2014-2016:

- Establishing a population base showing genetic marker frequencies of forensic interest;
- Establishing a bank of blood samples from relatives of persons who disappeared for political reasons and setting up a database of genetic profiles;
- Obtaining genetic profiles from samples of skeletons recovered and conducting their anthropological analysis;
- Forensic training.

22. To achieve these goals the Ministry of Justice must provide EAAF with the following:

- A database of persons who disappeared during the dictatorship of 1954-1989;
- A list of remains exhumed, ordered by location, with their related expert reports;

- A file on new cases for excavation, with the following information: georeferential, data, testimonies, historical information concerning the site, photographic records of the site;
- 600 random blood samples of the population;
- 200 blood samples from the relatives of persons who have disappeared.

23. The database containing information on disappeared persons has already been set up and is being supplemented by archival research and with cases opened by prosecutors in the Special Unit for Human Rights Offences of the Public Prosecution Service. So far data on more than 400 persons reported as having disappeared during the period 1954-1989 has been entered.

24. The Directorate for Reparation and Historical Memory is drafting a framework agreement with the Paraguayan Peace and Justice Service, which will design a pilot project for the search and identification of persons who disappeared during the period in question. Two external consultants will be hired to strengthen the agency's capacity, in particular to collate the nine years of work done by the State in the area, and to draft formal guidelines and institutionalize procedures relating to the search for and identification of disappeared persons.

25. It was considered necessary for the State to join forces with civil society, in order to support the State agencies responsible for reparation measures, so as to ensure that such measures will become public policies that transcend the actions of various Governments.

26. The first phase of the project will last 10 months and involve the following activities, which will be carried out in cooperation with the professional consultants hired:

- Investigations: into sites with unmarked and mass graves of persons who disappeared during the period under investigation, through field and archive work;
- Registration and Documentation: all the investigation, exhumation and protection activities will be registered and documented. This basic information will be used to identify persons who have disappeared, to organize the project and to disseminate it among civil society;
- Organization: all the identification work done since 2006 will be collated with a view to producing a final report that will form part of the pilot project for the identification of disappeared persons.

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